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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re

Chapter 11

SEARS HOLDING CORPORATION, *et al.*,

Case No. 18-23538 (RDD)

Debtors.

(Jointly Administered)

-----X

**OBJECTION BY INTERNATIONAL CRUISE & EXCURSIONS  
GALLERY, INC. TO NOTICE OF ASSUMPTION AND  
ASSIGNMENT OF ADDITIONAL EXECUTORY CONTRACTS**

International Cruise & Excursions, Inc. (“**ICE**”) hereby files this objection (the “**Objection**”) to the Notice of Assumption and Assignment of Additional Executory Contracts [Docket No. 3539] (the “**Second Notice**”). In support of this Objection, ICE states as follows:

**BACKGROUND**

1. Beginning on October 15, 2018 and continuing thereafter, each of the

Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code.

2. On January 18, 2019, the Debtors filed the Successful Bidder Notice, which, among other things, announced that the Debtors determined the offer submitted by Transform Holdco, LLC (the “**Buyer**”), established by ESL Investments, Inc., to acquire all or substantially all of the Global Assets, was the highest or best offer for the Global Assets.<sup>1</sup>

3. On January 18, 2019, the Debtors filed the Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction [Docket No. 1731] (the “**First Notice**”). Exhibit A to the First Notice identifies a “contract” with ICE. Although unclear in the First Notice, it appears that the Debtors propose an aggregate cure amount for all such contracts. The First Notice makes clear that as of January 18, the Buyer has not designated any contracts for assumption or assignment. Furthermore, the First Notice states, “You will receive an additional notice informing you if your Contract or Lease is designated for assumption or assignment to the Buyer.”

4. On Exhibit 1 to the Second Notice (ref. #278), the Debtors express their intention to assume and assign the Original Agreement. The Exhibit states that the “cure amount resolved” but the Second Notice is the first notice that ICE has received from the Debtors.

5. ICE never received notice of the bankruptcy filing, the sale motion, or the First Notice. The Second Notice went to an old address for ICE and arrived just days ago.

6. ICE is a global leisure travel and lifestyle benefits organization with an

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<sup>1</sup> Capitalized terms used herein but not otherwise defined herein shall have the meaning assigned to them in the Global Bidding Procedures Order.

international network of premier corporate, leisure, and affinity-based alliance partners.

7. ICE, on the one hand, and Sears Holdings Management Corp., as agent for Sears, Roebuck and Co. (“**Sears**”) and Kmart Corporation (together with Sears, the “**Company**”), on the other, executed that certain License Agreement dated October 1, 2011. The License Agreement was amended by the Amendment to License Agreement dated May 1, 2014, the Second Amendment to License Agreement dated January 1, 2017, and the Third Amendment to License Agreement dated September 18, 2017. The License Agreement and all amendments thereto are referred to herein as the “**Agreement**.” All rights and obligations of the Company under the Agreement were assigned to SHC Licensed Business LLC, effective as of July 7, 2015.

8. ICE received a proposed form of “License Business Affiliation Agreement Amendment” (the “**Buyer’s Amendment**”), which purports to assign the Agreement to the Buyer. ICE elected not to sign the Buyer’s Amendment. The Buyer’s Amendment states (in bold and capital letters) that the Agreement will be rejected by the Bankruptcy Court if it is not signed on or before April 10, 2019. ICE did not sign and Buyer (unilaterally) extended the deadline. ICE has still not signed the Buyer’s Amendment by the extended deadline.

### **OBJECTION**

9. ICE has not been afforded due process of law. As a matter of law, ICE has received inadequate notice.

10. Buyer’s First and Second Notice fail to provide any cure or assurance of prompt cure. 11 U.S.C. § 365(b)(1)(A).

11. Buyer has never offered and ICE has never received any “adequate

assurance of future performance.” 11 U.S.C. § 365(b)(1)(C).

**RESERVATION OF RIGHTS**

12. As ICE was not afforded due process of law, ICE continues to review the Asset Purchase Agreement, the First Notice, the Second Notice, and other relevant pleadings filed with the Court. Accordingly, ICE expressly reserves the right to amend, supplement, and/or modify this Objection and to file in the future additional appropriate pleadings.

WHEREFORE, ICE respectfully requests that this Court sustain its Objection and enter an Order (1) denying the assignment and assumption of the License Agreement (as amended); and (2) granting ICE such other and further relief as is just and appropriate.

Dated: Tarrytown, New York  
May 10, 2019

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